THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.968 of 2006

JUDGMENT:

This appeal is filed under Order XLIII Rule 1 of C.P.C. assailing the order dated 12.02.1999 passed in E.A.No.1327 of 1997 in E.P.No.75 of 1977 in O.S.No.139 of 1967 on the file of the Court of the Additional Senior Civil Judge, Guntur.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the appellant suffered a decree in O.S.No.139 of 1967. The first respondent filed E.P.No.75 of 1977 to realise the decretal amount. On 26.09.1997 the Executing Court conducted a sale. The second respondent is the successful bidder. Thereafter, the appellant filed E.A.No.1327 of 1997 under Order XXI Rule 89(1) C.P.C. to set aside the sale. The Executing Court, after affording a reasonable opportunity to both parties, dismissed the said E.A.

4. The point that arises for consideration in this appeal is:

Whether the impugned order is liable to be set aside?

5. In order to appreciate the rival contentions, it is not out of place to extract hereunder Order XXI Rule 89(1) C.P.C.:

> **"89. Application to set aside sale on deposit:-** (1) Where immovable property has been sold in execution of a decree, (any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person), may apply to have the sale set aside on his depositing in Court, --
>
> (a) for payment to the purchaser, a sum equal to five per cent of the purchase-money; and
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> (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for

> the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder."

6. The appellant filed the application within a period of limitation. The second respondent deposited 1/4th of the bid amount as directed by the Executing Court. The suit was decreed for an amount of Rs.54,032/- on 19.04.1975. The appellant has deposited an amount of Rs.87,500/-. The Executing Court dismissed the application on the ground that the appellant has not deposited the money as per the provisions of Order XXI Rule 89 C.P.C. Order XXI Rule 89 contemplates that a person, who files an application under Order XXI Rule 89 C.P.C., has to deposit five percent of the purchase money to the credit of the E.P. The bid was confirmed in favour of the second respondent for Rs.1,00,000/-. The appellant has to deposit at least Rs.5,000/- in order to comply Order XXI Rule 89(1)(a) C.P.C. For the reasons best known, the appellant did not deposit the amount equal to five percent of the purchase money. The appellant simply deposited an amount of Rs.87,500/-, which is not even equivalent to decree amount. No stay was granted in this matter. By this time the property might have been delivered to the purchaser i.e., second respondent. As observed earlier, the appellant has not strictly adhered to the procedure as contemplated under Order XXI Rule 89 (1)(a) C.P.C. The findings recorded by the Executing Court are sustainable either on facts or in law. I am fully endorsing with the findings recorded by the Executing Court. There are no grounds much less valid grounds to interfere with the order of the Executing Court.

7. In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 11.07.2018
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